

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Thomas Kennedy,
Appellant,

v.

Mills County Board of Review,
Appellee.

ORDER

Docket No. 12-65-0293
Parcel No. 03253-001

On April 22, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Jordan Glaser of Peters Law Firm, PC in Council Bluffs, Iowa represented Appellant Thomas Kennedy. Attorney Brett Ryan of Watson & Ryan, PLC in Council Bluffs, Iowa represented the Board of Review at hearing. The Appeal Board ruled Exhibits 1-13 offered by the Appellant were excluded because they were both untimely and were requested, but not provided to supplement the initial discovery responses. Board of Review Exhibit A was also excluded as untimely. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Thomas Kennedy, owner of a residential property located at 54941 Eads Road, Pacific Junction, Iowa, appeals from the Mills County Board of Review decision reassessing his property. The property is in the Pony Creek Development.

Kennedy protested to the Board of Review on the ground that the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2). His petition to the

Board of Review also sought an assessment of \$116,570. It was initially assessed for \$163,856, representing \$25,199 in land value and \$138,657 in improvement value. The Board of Review granted the petition, in part, and reduced the land assessment by 5% to \$23,939, making the total assessment \$162,596.

The parcel is improved by a one-story, modular home built in 1995. The dwelling has 1674 square feet of living area, which includes the 1296 square-foot main portion and a 378 square-foot addition which was added in 2005, a deck, and a patio. It does not have a basement. It is also improved by a 1008 square-foot, detached garage with 720 square feet of living quarters in the finished attic. The property is average construction quality (4+00) and in normal condition. It is located on a 0.439-acre site, to which the Assessor applied a 10% topography adjustment in the initial assessment.

Appraiser Jeanne McDonald testified on behalf of Kennedy. She is also familiar with each parcel owned by Kennedy and described the features of each. She explained that while the dwelling is listed on the property record as a modular, it is actually a manufactured home. McDonald reported the property has a septic system and uses a community well. She testified the property has no basement and is located in a flood zone. McDonald did not provide any evidence of market value.

Kennedy testified the assessed value of the land is too high and a half-acre lot should be valued at \$7500. In his opinion, the dwelling assessment of \$138,657 is also too high. Kennedy reported he just bought a dwelling like the subject for \$40,000 and only needs to add the concrete to make it similar to the subject property. He did not provide any evidence to support his opinion.

County Assessor Christina Govig testified that Vanguard completed the 2013 reappraisal for residential properties. However, her file notes indicate that the appraiser was refused entry for an interior inspection of the subject property during the reappraisal.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

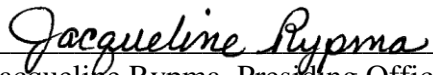
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

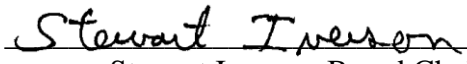
Kennedy presented testimony showing some of the characteristics of this property and his opinion that the assessed value was too high based on his recent purchase of a similar manufactured home. However, he did not present any evidence of this comparable sale property, or other admissible

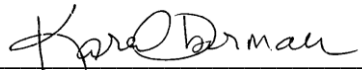
evidence to establish the fair market value of the subject property, such as an appraisal, comprehensive market analysis, or adjusted sales of comparable properties. This evidence is necessary to prevail on his market value claim. In summary, we determine the preponderance of the evidence does not support Kennedy's claim of over-assessment.

The Appeal Board orders the assessment of the subject property as determined by the Mills County Board of Review, as of January 1, 2013, is affirmed.

Dated this 15th day of May, 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

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